

**Letter of Findings: 02-20200378
Corporate Income Tax
For the Year 2018**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this document.

HOLDING

Corporation demonstrated that, through its 2016 reorganization, it has some net operating losses available to be carried over, which in turn reduced its corporate income tax due.

ISSUE

I. Corporate Income Tax - Net Operating Losses.

Authority: I.R.C. § 63; IC § 6-3-1-3.5; IC § 6-3-1-11; IC § 6-3-2-1; IC § 6-3-2-2; IC § 6-3-2-2.6; IC § 6-8.1-5-1; *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Miller Brewing Co. v. Indiana Dep't of State Revenue*, 903 N.E.2d 64 (Ind. 2009); *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480 (Ind. Tax Ct. 2012); *Indiana Dep't of State Rev. v. Caterpillar, Inc.*, 15 N.E.3d 579 (Ind. 2014); *E.I. DuPont De Nemours & Co. v. Indiana Dep't of State Revenue*, 79 N.E.3d 1016 (Ind. Tax Ct. 2017).

Taxpayer protests additional income tax assessment for the tax year 2018, claiming that it has sufficient net operating losses.

STATEMENT OF FACTS

Taxpayer is a multinational company doing business in Indiana. Taxpayer files Indiana Corporate Income Tax returns (IT-20 forms), reporting its apportioned income or losses subject to Indiana income tax. Prior to 2015, Taxpayer incurred some net operating losses ("NOLs"). Taxpayer carried over those NOLs and had completely utilized all its NOLs on the 2015 return.

Subsequently, Taxpayer and its affiliates were reorganized. One of Taxpayer's subsidiaries ("Sub EF") merged into Taxpayer. Beginning January 1, 2016, Taxpayer and "Sub EF" started filing their Indiana Corporate Income Tax returns as a single entity together under Taxpayer's name, reporting their income or losses subject to Indiana income tax. Taxpayer carried over and claimed \$3,421,165 NOLs on their 2016 IT-20 return. Taxpayer then carried over and claimed \$2,482,134 NOLs on their 2017 IT-20 return. Taxpayer subsequently filed their 2018 IT-20 return, claiming \$879,296 NOLs to be carried over to 2018.

The Indiana Department of Revenue ("Department") reviewed Taxpayer's 2018 tax filing and determined that Taxpayer had zero NOLs. The Department thus assessed Taxpayer additional income tax, interest, and penalty.

Taxpayer timely protested the assessment. This final determination ensues. Additional facts will be provided, as necessary.

I. Corporate Income Tax - Net Operating Losses.

DISCUSSION

The Department reviewed Taxpayer's 2018 tax filing and determined that Taxpayer had zero (\$0) NOLs and proceeded to assess additional income tax, penalty, and interest. Taxpayer, to the contrary, claimed that it has overpaid the tax because it had \$879,296 NOLs available to be carried over and applied to 2018.

Accordingly, the issue is, for Indiana income tax purposes, whether Taxpayer has \$879,296 NOLs to be used for 2018.

As a threshold issue, all tax assessments are *prima facie* evidence that the Department's claim for the unpaid tax is valid; the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012). "Each assessment and each tax year stands alone." *Miller Brewing Co. v. Indiana Dep't of State Revenue*, 903 N.E.2d 64, 69 (Ind. 2009). Thus, the taxpayer is required to provide documentation explaining and supporting its challenge that the Department's assessment is wrong. Poorly developed and non-cogent arguments are subject to waiver. *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012). Also, "all statutes are presumptively constitutional." *Indiana Dep't of State Rev. v. Caterpillar, Inc.*, 15 N.E.3d 579, 587 (Ind. 2014). When an agency is charged with enforcing a statute, the jurisprudence defers to the agency's reasonable interpretation of that statute "over an equally reasonable interpretation by another party." *Caterpillar, Inc.*, 15 N.E.3d at 583.

Indiana imposes a tax on the adjusted gross income of every corporation that has adjusted gross income derived from sources within Indiana. IC § 6-3-2-1(b); IC § 6-3-2-2. To compute the income subject to Indiana corporate income tax, Indiana adopts a multistep process to calculate a corporation's taxable Indiana adjusted gross income. *Caterpillar, Inc.*, 15 N.E.3d at 581. Indiana generally follows the tax principles established in the federal law. IC § 6-3-1-11. Indiana statutes refer to the Internal Revenue Code to efficiently compute what is considered the taxpayer's Indiana income tax. IC § 6-3-1-3.5(b) provides the starting point to determine a corporation's taxable income, stating that the term "adjusted gross income" shall mean, "In the case of corporations the same as 'taxable income' (as defined in Section 63 of the Internal Revenue Code) adjusted as follows" In determining the taxpayer's Indiana adjusted gross income, Indiana first refers to I.R.C. § 63 as the beginning point. In other words, when used "[i]n the case of corporations," the term "'adjusted gross income' shall mean the same as 'taxable income' (as defined in Section 63 of the Internal Revenue Code)" with certain modifications. IC § 6-3-1-3.5(b). The taxpayer is entitled to carry over the NOLs under IC § 6-3-2-2.6.

In this instance, Taxpayer filed its 2018 Indiana IT-20 return, claiming that it has NOLs from 2011, 2012, 2013, 2014, 2015. However, when the Department conducted the initial review of the filing, the Department found that Taxpayer has completely utilized its own NOLs prior to 2016. Taxpayer thus has zero NOLs to be carried over after 2016.

Nonetheless, throughout the protest process, a further review of the Department's records and Taxpayer's 2016 filing showed that Taxpayer's 2016 IT-20 return contained the following footnotes:

Effective January 1, 2016 [Sub EF] a wholly owned subsidiary of Taxpayer merged with and into Taxpayer . . .

The Merger qualifies as a tax-free reorganization pursuant to code section 368(A). . . .

Effective January 1, 2016, [Sub EF] merged with and into [Taxpayer] in a carryover basis transaction

Therefore, according to Taxpayer's 2016 filing and the Department's records, although Sub EF had losses from 2004 through 2015, Sub EF carried the 2004 loss back to 2002 (\$105,076 NOLs claimed) and 2003 (\$122,394 NOLs claimed). Thus, beginning January 1, 2016, Taxpayer was allowed to carry over the remaining \$6,557,100 NOLs available from Sub EF. See *E.I. DuPont De Nemours & Co. v. Indiana Dep't of State Revenue*, 79 N.E.3d 1016 (Ind. Tax Ct. 2017).

Taxpayer carried over and claimed \$3,421,165 NOLs on their 2016 IT-20 return. Taxpayer then carried over and claimed \$2,482,134 NOLs on their 2017 IT-20 return. As such, the actual available NOLs for Taxpayer to claimed in 2018 is \$653,801.

In short, given the totality of the circumstances, in the absence of other verifiable supporting documentation, Taxpayer was entitled to claim \$653,801 NOLs in 2018. The Department will adjust the records and recalculate the amount of tax due accordingly.

FINDING

Taxpayer's protest is sustained in part and respectfully denied in part. Taxpayer was entitled to claim \$653,801 NOLs in 2018.

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